

**SUPREME COURT OF NIGERIA**  
21ST APRIL, 1995. SC. 252/1990  
**CORAM:- S.M.A. BELGORE, E.G. OGWUEGBU,**  
**U. MOHAMMED, Y.O. ADIO, A.I. IGUH, JJSC.**

JUSTINAPPAUL .....APPELLANT

AND

EMMANUEL OZOKPO .....RESPONDENT

---

**ACTIONS** - Previous proceedings - On arrears of rent - Whether a bar to the present proceedings - On declaration of title.

**EVIDENCE** - Acts of ownership - No evidence adduced - Burden on plaintiff not discharged - Whether the claim for declaration of title should be Dismissed.

**EQUITY** - Laches and acquiescence defences - Land dispute - Whether the defences were available to respondent.

**LAND LAW** - Abandoned property - Definition thereof - Whether property in dispute was an abandoned property.

**LAND LAW** - Ownership - Not raised by appellant in previous action - Where appellant has paid arrears of rent in line with the magistrate's court's judgment - And did not appeal - Whether she can now claim ownership.

**LAND LAW** - Traditional history - Evidence thereof in an action for declaration of title - Whether established.

**LAND LAW** - Title - Burden is on plaintiff to prove origin of title of his grantor - Where plaintiff's case was highly discredited - The claim should be dismissed.

**LAND LAW** - Trespass - Where appellant was not in possession at the relevant time - Whether claim for damages for trespass can be maintained.

**LAND LAW-** *Injunction - Failure to establish any right or interest in the land - Whether the Court of Appeal rightly set aside trial court's judgment - In dismissing the appellant's claim.*

### **FACTS**

The appellant as plaintiff filed an action against the respondent before the High Court, Port Harcourt, claiming declaration of title, damages for trespass and perpetual injunction in respect of the land in dispute. Appellant claimed that the land was a gift to her from her late father. Appellant and her mother farmed on the land until 1958 when Ogbuka cleared the land. The said Ogbuka built a house and lived on the land with his family before selling it to one late George Ozokpo (respondent is administrator of Late Ozokpo's estate). George Ozokpo lived in the house with his family for about 10 years before the civil war that made them fled to their home town. Appellant said that she together with her father protested to the said Ogbuka and Ozokpo but they took no legal action in backing up their protest.

It was during the civil war that appellant moved into the property in dispute. After the war, the Abandoned Property Authority released the property to the respondent. Respondent's claim for arrears of rent against the appellant before the magistrate's court was successful. Appellant paid the judgment debt, raised no issue of ownership and did not appeal against that judgment. Appellant subsequently filed the present action. The trial court entered judgment for the appellant. Respondent's appeal to the Court of Appeal was upheld by that court which set aside the trial court's judgment and dismissed the appellant's claim. Being dissatisfied, appellant has now appealed to the Supreme Court to determine inter alia, whether the magistrate's court judgment on arrears of rent was a bar to the appellant's claim.

**HELD** (Unanimously dismissing the appeal per lead judgment of **ADIO JSC**)  
***Abandoned property - Definition thereof***

1. The provisions of the Law quoted above are clear and unambiguous. Where the provisions of a statute are clear and unambiguous the statute is given its plain and grammatical meaning. If the provisions of section 2 of the Law quoted above which define "abandoned property" are applied to the facts of this case referred to above, it will clearly be seen that the property in dispute in this case was an abandoned property. (p. 904 A)

***Ownership - Not raised by appellant in previous action***

2. In the present case, the issue of ownership of the property in question was one which the appellant could have raised in the action for arrears of rent instituted in the Magistrate's Court. She did not raise it but allowed judgment to be given against her and she paid the arrears of rent. She cannot now deny that she was not a tenant of the respondent during the relevant period. The judgment of the magistrate's Court is still subsisting and there has been no appeal against it. If the fact of her not resisting the action instituted against her in the Magistrate's Court by the respondent for arrears of rent for the time she occupied the property in dispute, could not estop her per rem iudicatam it would, at least, affect her credibility with reference to her present assertion or claim that the property in dispute belonged to her at all material times. That was an assertion or claim which she should have made but which she did not make in the earlier suit in the Magistrate's Court which was also between her and the respondent in respect of the arrears of rent for the period during which the appellant occupied the property in dispute. The judgment of the Magistrate's Court in the matter is a judgment of a court of competent jurisdiction. There was no appeal against it. It is subsisting against the appellant, cannot be ignored, and legal effect has to be given to it.  
(p. 905 B)

***Equity - Laches and acquiescence***

3. The appellant's claim, to say the least, was a stale claim. The conduct of the appellant was such that it will be fraudulent to allow her to assert or set up her alleged ownership of the land in dispute. The answer to the question raised under the third issue is in the affirmative. The defences of laches and acquiescence were available to the respondent.  
(p. 908 H)

***Land law - Traditional history***

4. The crucial question then is whether the appellant led evidence which could warrant her claim for declaration of title to the land in dispute being granted. The evidence which she led was based on traditional history alone. Where evidence of traditional history is not contradicted or in conflict and found by the court to be cogent, it can support a claim for declaration of title. That was not so in this case as there was evidence that the property in dispute was at a certain time an abandoned property within the Abandoned Property (Custody and management) Law of the Rivers State and that pursuant to the powers conferred on the Authority, the Authority subsequently released and trans

ferred it to the respondents. In the circumstance, the appellant had not established her claim by means of evidence of traditional history. (911 G)

***Acts of ownership - No evidence adduced***

B 5. An appellate court will reverse findings of fact if in its opinion they are not supported by evidence. The appellant did not adduce any evidence of acts to e of ownership in support of her claim for a declaration of title. The fact that the appellant occupied the property in dispute for a brief period could not rightly be regarded as an act of ownership because she did so in the absent of C George Ozokpo who fled Port Harcourt during the relevant period as a result of the civil war and, in any case the appellant paid rent for the aforesaid period. If in a claim for declaration of title, a plaintiff relies on traditional history or acts of ownership and fails to adduce evidenced traditional history or of acts of ownership warranting the granting of hi claim, the proper order which the D court should make is one dismissing his claim. Also, where the evidence of traditional history is scanty and then is no evidence of acts of ownership, the burden on the plaintiff to prove. In claim for a declaration of title has not been discharged; the claim shout be dismissed. (p. 912 H)

***E Title - Plaintiff to prove origin of title of his grantor***

6. If a plaintiff s claim for declaration of title to land is based on a grant of such land to him, the burden is on him to plead and prove the origin of the tit of the grantor unless it is admitted. Apart from other things, was the father of the appellant the only child of her grandfather? Finally, the case of t appellant was F so discredited by the evidence led by the respondent that it would be unreasonable and inequitable to grant her a declaration of title to the land in dispute. If a defendant, in a claim for declaration of title to land, is able to discredit by evidence, oral or documentary, the evidence of the plaintiff, then the claim of the plaintiff should be dismissed. The court below was right in holding that G the appellant did not establish her claim to a declaration of title to the property in dispute. (p. 913 D)

***Trespass - Where appellant was not in possession***

H 7. A plaintiff may fail to establish his claim for declaration of title to land. That does not mean that he must necessarily fail in his claim for damages for trespass and injunction. In the case of the appellant’s claim for damages for trespass, the view expressed by the court below, with which I agree that only a person in possession of the land in dispute at the time that trespass was

committed could sue for damages. The court below held rightly that there was no evidence that the appellant was in possession of the land in dispute at the relevant time. (p. 913 G)

***Injunction - Failure to establish any right in the land***

B

With reference to the appellant's claim for injunction, the appellant failed to establish that she had any right or interest in the land in dispute warranting protection by an injunction. The court below rightly held that the claim for an injunction should not have been granted by the learned trial Judge. The inevitable conclusion to which I have come is that the answer to the question C raised under issue (4) above is in the affirmative. The court below was right in setting aside the judgment of the learned trial Judge and in substituting it with an order dismissing the appellant's claim. (p.914C)

D

**NOTABLE POINTS OF INTEREST**

**ADIO.JSC**

***1. When appellate court can evaluate evidence***

The court below rightly held that the question whether the property in dispute was an abandoned property was a question not considered or sufficiently considered by the learned trial Judge. In the circumstance, since all the relevant evidence was on record and the determination of the issue did not depend on credibility of witnesses, the court below, as an appellate court, could evaluate the evidence and make the necessary determination. (p. 903 A) F

***2. Whether lower court's evaluation of evidence was fair***

In my view, the summary of the evidence on record and the evaluation thereof made by the court below were fair to both sides and comprehensive. In coming to the conclusion that no warning was given by the appellant and/or her G father to Ogbuka before he built a house on the land in dispute or to Ozokpo before he bought the property in dispute from Ogbuka, the court below evaluated the relevant evidence and rightly found that the evidence led, on the point, by the appellant was conflicting. (p. 906 H)

H

***3. Equitable remedy of laches and acquiescence***

Acquiescence simply means an assent to an infringement of rights, either expressed, or implied from conduct, by which the right to equitable relief is

normally lost. Laches means negligence or unreasonable delay in asserting or enforcing a right. The law is that delay defeats equities or that equity aids the vigilant and not the indolent. For these reasons, a court of equity has always refused its aid to stale demands, where a party has slept upon his rights and acquiesced for a great length of time. In such a case, it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by conduct and neglect he has, though not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted. (p. 907 E)

**4. Claim of ownership - when to seek legal remedy to show seriousness**

If the appellant was serious and honest about her alleged claim of ownership of the land in dispute, she should have warned Ogbuka and George Ozokpo that the land in dispute belonged to her and if they failed to heed the warning she ought to have availed herself of the legal remedy available to her by suing Ogbuka and/or George Ozokpo within a reasonable time. (p. 908 E)

**5. Declaration of title - Plaintiff not to rely on weakness of the defence**

The law is that in a claim for declaration of title to land, the onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. He must rely on the strength of his own case and not on the weakness of the defendant's case. If the onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant, he not having sought the declaration. The position then is that in an action for declaration of title to land, the plaintiff should concentrate on proving his case on the evidence led by him; he should not pre-occupy himself, as had been done in this case, with the question whether the defendant's case was weak or that the defendant's title to the land in dispute was defective. However, if the evidence led by the defendant supports the plaintiff's case, the plaintiff can rely on it. (p. 911 D)

**H OGWUEGBUIJSC**

**6. Appraisal of oral evidence**

The appraisal of oral evidence and the ascription of probative values to such evidence is the primary duty of a tribunal of trial and a court of appeal will only

interfere if it is convinced that the latter has exercised its discretion on wrong principles. (p. 915 B)

## **IGUHJSC**

B

### ***7. When estoppel per rem judicatam does not arise***

There can be no doubt, indeed it is common ground that the parties and the res, that is to say, the subject matter of litigation in both Exhibit D and the present action are the same. It is equally clear that the claim and the issue in the two cases are not the same. Exhibit D is a straight forward claim for arrears of rent whilst the present action is for declaration of title, trespass and injunction in respect of the same property. Accordingly Exhibit D cannot operate as estoppel per rem judicatam in the present action. (p.917G)

### ***8. Whether a tenant can deny his landlord's title***

D

The rule is firmly established that a tenant cannot dispute the title of his landlord who put him into possession of the premises. So too, payment of rent by a tenant to his landlord is prima facie evidence of the landlord's title to the premises, in the absence of fraud, misrepresentation or mistake. Unless a tenant is able to establish that he paid rent by fraud, misrepresentation or mistake or in ignorance of the true state of affairs, he is estopped by his payment of rent to the landlord from denying the latter's title. (p. 918 D)

## **REPRESENTATION**

Chief C. Muoma with Mr. E. Nwosu for the appellant  
Chief D. Udogu for the respondent

F

## **CASES REFERRED TO**

Akinola v. Oluwo (1962) 1 All N.L.R. 224 at p. 227  
Abisi v. Ekwealor (1993) 6 N.W.L.R. (R 302) 643  
Abioye v. Yakubu (1991) 5 N. W.L.R. (R 190) 130  
Abbey v. Ollenu (1954) 14 W.A.C.A. 567, 568  
Ramsden v. Dyson (1866) 1 H.L. 129  
Kaiyaoja v. Egunla (1974, 12 S.C.55 at p. 67 - 69  
Isiba v. Hanson, (1968) N.M.L.R. 76  
Thomas v. Holer 12 W.A. C.A. 78  
Kodilinye v. Odu 2 W.A.C.A. 336 at pp. 337 & 338  
Koja v. Bonsie (1953) 14 W.A.C.A. 242  
Motunwase v. Sorungbe (1988) 4 N.W.L.R. (Pt. 92) 90

G

H

- Lengbe v. Imale (1959) W.R.N.L.R. 325; (1959) S.C.N.L.R. 640  
 Fatunde v. Omwoamanam (1990) 2 N.W.L.R. (Pt. 167) 322  
 Dibiaaka v. Osakwe (1989) 3 N.W.L.R. (Pt. 132) 101  
 Ogundairo v. Okanlawon (1963) 1 All N.L.R. 358 at p. 359  
 B Ojibah v. Ojibah (1991) 5 N.W.L.R. (Pt. 191) 296  
 Amakor v. Obiefuna (1974) 1 All N.L.R. (Pt. 1) 119  
 Efana v. Adekunle (1961) 5 E.N.L.R. 55  
 Bank of Baroda v. Mercantile Bank of Nigeria Ltd (1987) 3 N.W.L.R. (PT. 60) 233 at 240  
 C Elike v. Nwankwoala (1984) 12 S.C.301 at 325  
 Adomba v. Odiese (1990) 1 N.W.L.R. (Part 125) 165 at 178  
 Alasa v. Ilu (1965) N.M.L.R. 66  
 Yoye v. Olubode (1974) 1 All N.L.R. (Part 2) 188 at 193  
 Olorunkoje v. Rokosu (1953) 20 N.L.R. 188  
 D Cooper v. Blandy (1834) 1 Bing. N.C. 45

### **STATUTE REFERRED TO**

Abandoned Property (Custody and Management) Law, No. 8 1969 of Rivers State s.2.

### **LEAD JUDGMENT BY ADIO JSC**

In the High Court of the Rivers State of Nigeria, Port Harcourt Judicial Division, the appellant claimed against the respondent and the wife of F George Ozokpo who was the second respondent the following reliefs:

- “1. Declaration of title over all that piece of land being and farming part of the land known as ‘OKPORO WOJI’ and which is now known as 38, Abakaliki Street, Mile 1, Diobu, Port Harcourt, Annual rental value N50,000.*  
 G *2. N3,000.00 as general damages for trespass.*  
*3. perpetual injunction restraining the defendants either by themselves or agents or servants or otherwise from interfering with the plaintiff’s possession and use of the land.”*

Pleadings were duly filed and exchanged. The evidence led by the H appellant was that the land in dispute was a gift to her from her late father called Paul Ejekwe Woji Rumuwoji Village, Diobu, Port Harcourt. The appellant and her mother farmed on the land in dispute until 1958 when the appellant saw one person called Ogbuka in company of his labourers clearing the land in dispute preparatory to the erection of a building. The appellant and her



father protested to the said Ogbuka and made a report of what he did to the land in dispute to the police. Ogbuka ignored the appellant and her father, did not heed the warning allegedly given to him, and completed the building with utmost dispatch. He subsequently sold the land and the building to one George Ozokpo. The appellant's father allegedly warned George Ozokpo against buying the property but he too did not heed the warning. He, his family, and tenant occupied the building and were living in it.

The respondents' case was that Ogbuka built a house on the land in dispute. He and his family lived in the house and after he sold the house and land to George Ozokpo who also lived there with his family for about ten years. The respondents denied that the appellant and her father warned Ogbuka or Ozokpo. During the civil war in this country, Ozokpo and his people fled to their home town in then Eastern Nigeria and the building was vacant. The appellant moved into the house and occupied it. At the end of the civil war, the respondent and the wife of Ozokpo returned to Port Harcourt. Their attempt to retake possession of the property in dispute was resisted by the appellant. Meanwhile, George Ozokpo had died and the respondent and the wife of George Ozokpo were the administrator and administratrix of the estate of George Ozokpo. Their application to the Abandoned Property Authority that the property in dispute should be released to them was granted and the authority executed an instrument of transfer in their favour. In possession of letters of administration, Exhibit "F" and the instrument of transfer, Exhibit "C", the respondents instituted an action in the Magistrate's Court for arrears of rent against the appellant in relation to the period during which she occupied the property. The respondents got judgment against the appellant and she paid the judgment debt. She, however, instituted the present action against the respondents and did not appeal against the judgment given against her in the Magistrate's Court. The wife of George Ozokpo is no longer a respondent in this action because she had died.

The learned trial judge, after consideration of the evidence led by the parties and the submissions of their counsel, entered judgment for the appellant. Dissatisfied with the judgment, the respondents lodged an appeal against it to the Court of Appeal. The appeal was allowed by the court below and the judgment of the learned trial judge was set aside and in its place was substituted an order dismissing the appellant's claim. Dissatisfied with the judgment of the court below, the appellant has appealed to this court.

The parties duly filed and exchanged briefs. The appellant filed a reply brief. Five issues for determination were identified in the appellant's brief while three issues for determination were identified in the respondent's

brief.

The three issues identified in the respondent's brief were also identified in the appellant's brief. Having regard to the issues identified in the briefs of the parties and to all the circumstances of the case, the following issues for determination are sufficient for the determination of this appeal:

- (1) Whether the property in dispute was abandoned property within the provisions of the Abandoned property (Custody and Management) Law, No. 8 of 1969 of the Rivers State.
- (2) Whether the defences of laches and acquiescence were available to the respondent.
- (3) Whether the judgment of the Magistrate's Court in relation to recovery of arrears of rent from the appellant was a bar to the claim of the appellant.
- (4) Whether the court below was right in setting aside the judgment of the learned trial judge and substituting it with an order dismissing the appellant's claim.

With reference to the question raised under the first issue, the court below referred to the time that the property in dispute was completed and to how the late George Ozokpo who was not a native of the State brought it and moved into it with members of his family and tenants. He lived until he, members of his family and tenants fled Port Harcourt as a result of the civil war. The court did not believe that the appellant or his father warned George Ozokpo or his predecessor-in-title not to build or buy the property in dispute. The court below also referred to the refusal of the appellant, who moved into the property in the absence of George Ozokpo, to move out when she was asked to do so by the administrator and administratrix of the estate of George Ozokpo, and came to the conclusion that the property in question was an abandoned property within the provisions of the Abandoned Property (Custody and management) Law. It was contended for the appellant that the court below misdirected itself when it held that the property in dispute to which an indigene of the State had claim of ownership was an abandoned property within the provisions of the Law. In the appellant's view, she, an indigene of Rivers State, was already occupying the property in question under a claim of right of customary ownership, when the law came into force. The Law, it was submitted for the appellant, did not apply to any land the ownership of which was being claimed by an indigene of Rivers State who was already in physical possession or occupation of the Land. Therefore, it was further contended, the property in dispute was not an abandoned property. The submission made for the respondent was that the court was right when it held that the property in

dispute was an abandoned property. It was further submitted that on the release of the property in dispute it formed part of the estate of Ozokpo.

The court below rightly held that the question whether the property in dispute was an abandoned property was a question not considered or sufficiently considered by the learned trial judge. In the circumstance, since all the relevant evidence was on record and the determination of the issue did not depend on credibility of witnesses, the court below, as an appellate court, could evaluate the evidence and make the necessary determination. See Akinola & Ors., v. Oluwo & Ors. (1962) All N.L.R. 224 at p. 227; and Abisi v. Ekwealor (1993) 6 N.W.L.R. (pt. 302) 643. The evidence led by the appellant was that her father warned the predecessor –in-title of George Ozokpo not to build on the land in dispute, the warning was ignored and the building was completed with dispatch. Also, the father of the appellant warned George ozokpo not to buy the property in dispute, but the warning was ignored. The respondents alleged that George Ozokpo bought the property, moved into it and lived there with his family and tenants from whom he was collecting rents. They lived there for several years without being disturbed and fled there as a result of the civil war. It was in the absence of George Ozokpo during the civil war that the appellant moved in the property and occupied it. In other words, the appellant could not, when George Ozokpo was still living in the property in question, move into the property or avail herself of any remedy like suing the said George Ozokpo in a court of law to assert her (appellant's) right. In short, it was the advantage of the absence of George Ozokpo from Port Harcourt that the appellant took. She did not move into the property pursuant to the exercise of any ownership. Further, when the administrator and the adminstartrix of the estate of Ozokpo sued her in the Magistrates' Court for arrears of rent for the period that she (appellant) occupied the property, she did not resist the claim by raising the issue that the property in question belonged to her. Judgment was given against the appellant and she promptly paid the judgment debt. The provision of the law on the definition of an "abandoned property" set out in section 2 thereof is as follows:

*"abandoned property" means any property moveable or immovable belonging to a person whose home town or place of origin is not situate in the Rivers State of Nigeria, which in the opinion of the military Governor or the Authority, has been abandoned by the owner thereof as a result of the civil war in Nigeria or the disturbance in the country leading to it, and is at the time making this Edict not in physical occupation or under the personal control and management of such owner".*

The provisions of the Law quoted above are clear and unambiguous. Where the provisions of a statute are clear and unambiguous the statute is given its plain and grammatical meaning. See Abioyev. Yakubu, (1991)5 N.W.L.R (pt190)130. If the provisions of section 2 of the Law quoted above which B define “abandoned property” are applied to the facts of this case referred to above, it will clearly be seen that the property in dispute in this case was an abandoned property. The answer to the question raised under the first issue is in the affirmative.

The court below considered the question raised under the second C issue and came to the conclusion that the appellant was estopped from denying the respondent’s title. The court below, per Omosun, J.C. A., stated, inter alia, as follows:

*“The next ground of complaint against the judgment is the payment of arrears of rent by the respondent. It is common ground that she paid the D arrears of rent after the appellant got judgment in the Magistrate’s Court, Port Harcourt. Her reason for paying is that execution was about to be levied, Exhibit ‘D’ is the judgment. She did not appeal against it. The significance of it is that she paid up. The lower court held that Exhibit ‘D’ did not operate as estoppel per rem judicata See p. 116 lines 18-27 of the printed E records. In my judgment the payment of the arrears of rent is an acknowledgment that the appellant is the landlord of the property. She’ acknowledged the appellant’s title.... she is estopped from denying the appellant’s title. “*

The submission made on behalf of the appellant was that the court below F misdirected itself in law in holding that the judgment in the action for arrears of rent instituted by the respondent against the appellant in the Magistrate’s Court operated as an estoppel per re judicatam to bar the appellant’s claim in the High Court. It was argued that title was not in issue in suit filed in the Magistrate’s Court by the respondent against the appellant whereas title is in G issue in the present case. For that reason, the judgment action in the Magistrate’s Court could not estop the appellant or bar the action instituted in the High Court. This court was urged on behalf of the respondent to have regard to the substance of the judgment in the action instituted in the Magistrate’s Court against the appellant by the respondent for arrears of rent H and the legal effect of the appellant paying the arrears of rent which meant that she (appellant) acknowledged the respondent as her landlord.

Certainly, a person occupying a property which he genuinely believes, on reasonable grounds, belongs to him will resist seriously any claim against him by any other person for arrears of rent for his occupation of the property.

Indeed, he will make it clear during the proceedings that his defence to the action is that the property belongs to him and he cannot be made to pay rent to any other person for the occupation of his property. It does not matter that the court entertaining the action for the arrears of rent has no jurisdiction to determine title to land. If the court has no jurisdiction to determine the question the action may be struck out or caused to be transferred to a court that has jurisdiction to determine the question, depending on whatever statutory provisions that are made to take care of such a situation. In the present case, the issue of ownership of the property in question was one which the appellant could have raised in the action for arrears of rent instituted in the Magistrate's Court. She did not raise it but allowed judgment to be given against her and she paid the arrears of rent. She cannot now deny that she was not a tenant of the respondent during the relevant period. The judgment of the magistrate's Court is still subsisting and there has been no appeal against it. If the fact of her not resisting the action instituted against her in the Magistrate's Court by the respondent for arrears of rent for time she occupied the property in dispute, could not estop her per rem judicatam it would, at least, affect her credibility with reference to her present assertion or claim that the property in dispute belonged to her at all material times. That was an assertion or claim which she has made but which she did not make in the earlier suit in the Magistrate's Court which was also between her and the respondent in respect of the arrears of rent for the period during which the appellant occupied the property in dispute. The judgment of the Magistrate's Court in the matter is a judgment of a court of competent jurisdiction. There was no appeal against it. It is subsisting against the appellant, cannot be ignored, and legal effect has to be given to it.

The next question for consideration is the question raised under the third issue which was whether the defences of laches and acquiescence were available to the respondent. The court below, after due consideration of the evidence, on the point, came to the conclusion that the aforesaid defences were available to the respondent. On this aspect of the case, the court below stated, inter alia, as follows:

*"The complaint in ground 4 issues D is the non-consideration of the defence(s) of laches and acquiescence. It is the case of the respondent that the land in dispute was given to her by her late father one Paul Ejekwu Woji. Her mother and herself farmed on it. They planted okro and vegetables on it. In 1958 (sic) someone allegedly sent by one Ogbuka began to clear the land. Her father and herself reported the matter to the police.... It is clear that the protest, if any, were before Ogbuka completed the house in 1954. He*

*sold it in 1958.... Mr. Ogbuka completed the house in 1954, sold it to late George Ezeojiako Ozokpo who moved into the house with his family.. He had tenants too. He lived in the house uninterrupted and undisturbed until 1968.*

*B He had quiet continuous possession. He fled in 1968 because of the civil war. Respondent took advantage of this and packed into the house. It is clear that for 10 years the respondent and her father left George Ozokpo in the house undisturbed. There were no protests. They did not take him to court- It is also dear on the printed records that George Ezeojiako Ozokpo was not  
C warned against the purchase of the property in 1958. Protests if any were with Mr. Ogbuka who built and completed the house before he sold it.*

*For over 10 years the respondent slept over her rights until providence played into her hands. It is conceivable that but for the civil war, she would not have done anything about the property. The courts have always  
D refused to aid stale demands, where a party has slept over his rights and acquiesced for a great length of time-here for 10 years.... I agree with Mr. Udogu that there is no evidence whatsoever that the respondent ever protested to George Ezeojiako Ozokpo in respect of the property at any time at all. In my opinion the defence of laches and acquiescence was well founded.  
E So it has come to this that the respondent by her silent for 10 years, abstained from asserting her legal rights, stood by and saw the building built is evidence that she abandoned or released her right”.*

*The appellant stated in her brief what constitute the defences of laches and acquiescence, and submitted that the court below erred in law by  
F holding that the appellant’s claim was barred or caught by the doctrine of laches and acquiescence as there was evidence that the appellant and her predecessor-in-title (her father) protested to Ogbuka and that Ozokpo was warned not to buy the property in dispute. For that reason, it was contended that the appellant’s claim could not be barred by laches and acquiescence.  
G The cases of Abbey v. Ollenu, (1954) 14 W.A.C.A. 567, 568 and Ramsden v. Dyson (1866) I.H.L 129 were, *inter alia*, cited. This court was urged, on behalf of the respondent, to uphold and affirm the views expressed by the court below on the point. It was submitted that if the defences of laches and acquiescence were available to the respondent, then the principles of equity enun-  
H ciated in Ramsden’s case, *supra*, applied.*

*In my view, the summary of the evidence on record and the evaluation thereof made by the court below were fair to both sides and comprehensive. In coming to the conclusion that no warning was given by the appellant and/or her father to Ogbuka before he built a house on the land in dispute or*

to Ozokpo before he bought the property in dispute from Ogbuka, the court below evaluated the relevant evidence and rightly found that the evidence led, on the point, by the appellant was conflicting. The following part of the judgment of the court below clearly demonstrated the conflict in the evidence led, on the point, by the appellant:

*“It is clear on the printed records that nobody warned George Ezeojiako Ozokpo not to purchase the house. The evidence led by the respondent in proof of paragraph 12 of the statement of claim is conflicting. The respondent said it was her father alone who warned George Ozokpo against the purchase p.63 lines 15-18 but she could not remember when Ogbuka D. W3 sold the property to Ozokpo p.66 lines 9- 1 O. Her mother P. W 4 at p. 72 line 9 also did not know when the land was sold to Ozokpo. If these witnesses do not know when the property was sold, the respondent is not in a position to know if her father warned Ozokpo against the purchase. I am of the view that nobody protested or warned George Ezeojiako Ozokpo against the purchase “.*

The defence of laches and the defence of acquiescence on which the respondent relied are separate and distinct defences. See the distinction as stated in Kaiyaoja & Ors., v. Egunla, (1974) 12 S.C. 55 at pp. 67-69.

Acquiescence simply means an assent to an infringement of rights, either expressed, or implied from conduct, by which the right to equitable relief is normally lost. See Wilmot v. Barber, 5 Ch. D. 105 cited with approval in Kaiyaola’s case supra. Laches means negligence or unreasonable delay in asserting or enforcing a right. The law is that delay defeats equities or that the vigilant and not the indolent. For these reasons, a court of equity has always refused its aid to stale demands, where a party has slept upon his rights acquiesced for a great length of time. In such a case, it would be practically unjust to give a remedy, either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by conduct and neglect he has, though not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted. See Lindsay Petroleum Co.v. Hurd (1874) L.R. 5 P.C. 221 at p.239 also cited with approval in Kaiyaoja’s case, supra at pp.67 and 68. The evidence in this case was that Ogbuka, the predecessor-in-title of Ozokpo, completed the house he was building on the land in dispute in 1954.

The allegation that the appellant and her father warned Ogbuka not to build the house there was rightly rejected by the court below. Ogbuka later sold the land and the house thereon to Ozokpo. Also, the allegation that Ozokpo was warned not to buy the property from Ogbuka was rightly rejected by the court

below. Ogbuka after completing the house on the land in dispute, lived with members of his family and his tenants in the house for some time before he sold it to Ozokpo. In the case of Ozokpo, he lived in the house with his family from 1958 to 1968, a period often years, without being disturbed by the appellant or any other person. He and members of his family fled from there in 1968 as a result of the civil war. When the wife of Ozokpo and other members of his family returned to Port Harcourt after the civil war they found, in the house, the appellant who took advantage of the absence of Ozokpo to move there. George Ozokpo had died while he was away in the Eastern State during the civil war. The wife of Ozokpo and his relation (respondent) were granted letters of administration of his estate and the appropriate authority released the property, which was an abandoned property, to them. They asked the appellant to move out of the house and, when she refused, they sued her for arrears of rent for the period during which she occupied the house. During the proceedings in the magistrate's court in relation to the case, the appellant did not raise the issue that she owned the land in dispute. The magistrate's court gave judgment against her and she paid the judgment debt. There has been no appeal against the judgment. It was in July, 1975, that the appellant commenced the present action relating to the land in dispute on which Ogbuka completed a building in 1954 and lived in the building with members of his family until 1958 when he sold it to George Ozokpo who also lived in the house with members of his family from 195 to 1968 when he and members of his family fled Port Harcourt because of the civil war. If the appellant was serious and honest about her alleged claim of ownership of the land in dispute, she should have warned Ogbuka and George Ozokpo that the land in dispute belonged to her and if they failed to heed the warning she ought to have availed herself of the legal remedy available to her by suing Ogbuka and/or George Ozokpo within a reasonable time I will only conclude this aspect of the matter by making reference to Ramsden v. Dyson, (*supra* where the court observed, *inter alia* as follows:

*"If a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own "*

The appellant's claim to say the least, was a stale claim. The conduct of the appellant was such that it will be fraudulent to allow her or set up her alleged ownership of the land in dispute. The answer to the question raised under the third issue is in the affirmative. The defences of laches and acquies



cence were available to the respondent.

The question raised under issue (4) was whether the Court of Appeal was right in setting aside the judgment of the learned trial Judge and substituting therefore an order dismissing the appellant's claim. Item 1 in the appellant's claim was as follows: B

*"1. Declaration of title over all that piece of land being and forming part of the land known as 'OKPORO WOJI' and which is now known as 38 Abakilikii Street, mile 1, Diobu, Port Harcourt. Annual rental value= N50, 000"*

In order to prove her claim for a declaration of title to the land in C dispute, the appellant led evidence on traditional history. It was alleged that the land in dispute originally belonged to the appellant's great grandfather, called Woji. The said Woji begat Ejekwu who begat Paul. The appellant's father was Paul and the land in dispute was part of the larger piece of land of the said OKPORO WOJI OR UTULORO WOJI LAND. When one Ogbuka D started to clear the land in dispute to enable him to erect a building on it, the appellant and/or her father allegedly warned Ogbuka not to do so but Ogbuka completed building and moved into it with his tenants and members of his family. They lived in the house until the time that he sold the land and the building thereon to one George Ozokpo, despite the warning allegedly given E to him, bought the property in dispute. He too moved into it together with members of his family and lived there for about ten years before they fled Port Harcourt because of the civil war. In the absence of George Ozokpo the property in dispute became vacant and the appellant moved into it. George Ozokpo died in the Eastern State during the civil war. After the civil war, Ozokpo's wife F and his brother returned to Port Harcourt and got the property in dispute to be released to them by the Abandoned Property Authority. They also obtained letters of administration to enable them administer the estate of Ozokpo. Armed with the two documents, they sued the in magistrate's court for arrears of rent G for the period that the appellant stayed in the property in dispute. Judgment was given against the appellant who paid the judgment debt.

The respondent agreed that Ogbuka built a house on the land in H dispute and with members of his family before he sold the property to George Ozokpo Who also lived in the house with members of his family for about ten years before they fled to the Eastern State as a result of the civil war. The respondent denied that the appellant and/or her father warned Ogbuka not to build a house on the land in dispute or that George Ozokpo was warned not to

buy the property in dispute from Ogbuka. George Ozokpo died in the Eastern State during the civil war and on the return of the respondent and the wife of Ozokpo to Port Harcourt after the civil war, they were granted letters of administration which enabled them to administer the estate of George Ozokpo and the property in question was released to them by the Abandoned Property Authority. They also confirmed that they sued the appellant for arrears of rent for the period during which the appellant occupied the property in dispute in the absence of George Ozokpo.

In reversing the judgment of the learned trial judge, the court below expressed the view that the appellant did not, having regard to the totality of the evidence before the court on traditional history establish the declaration of title to the land in dispute and that she sought. The following was the view of the court below, per Omosun, J.C.A., on the purported proof of the appellant's claim of declaration of title before the learned trial Judge by means of traditional evidence and acts of ownership:

*"If I may ask, where are the numerous and positive acts over a sufficient length of time to warrant the inference that she is the owner. The answer is in the negative. I agree with Mr. Udogu that the lower court relied on unproved and non-existent evidence to give judgment for the plaintiff..... In my judgment the learned Judge could not rely on the traditional evidence to grant the declaration without taking into consideration that for 14 years first D.W. 3 and the George Ozokpo lived on the land and exercised acts of ownership without protest from the respondent".*

It is argued for the appellant that the respondent who based his case on the alleged purchase of the land in dispute by the late George Ozokpo from Ogbuka did not produce any document to prove the alleged sale. On the other hand, the appellant based her claim on a grant made to her by her late father. It was further argued that the evidence of traditional history led by the appellant was challenged and uncontradicted. For that reason, it was submitted that when in an action for declaration of title to land, the plaintiff has traced his title directly to one whose title to ownership has been established, the onus is upon the defendant to show that his possession is of such a nature as to oust that of the original owner. It was further submitted that once it is proved that the original ownership of property is in a party, the burden of proving that that party has been divested of ownership rests on the other party. Isiba v. Hanson, (1968) N.M.L. R. 76; and Thomas v. Holder, 12 W.A.C.A. 78 were cited. Consequently, it was submitted that the court below misdirected itself in law as to the proof of better title between the appellant and the respondent by failing to make a judicious comparison and evaluation of their respective root of title

having regard to the pleadings and the evidence. It was further submitted that the appellant having traced her title to Woji (her great grandfather) whose title to ownership of the land in dispute had been established, the appellant had done all that was required of her by establishing a better root of title and was, therefore, entitled to judgment. On the question of the release of the property B in dispute to the respondent by the appropriate authority, it was submitted that the alleged title of the respondent was defective and the purported release could not cure the defect.

The contention of the respondent was that on the release and transfer of the property in dispute to the respondents by the Abandoned Property C Authority and by virtue of Exhibit "C" (the letters of administration) the property in dispute became part of the estate of the estate of George Ozokpo by operation of law. Alternatively, this court was urged to affirm the view expressed by the court below that, at least, the late George Ozokpo acquired an equitable interest in the property in dispute and that as he had, pursuant to D the purchase of it from Ogbuka, moved into it and stayed there with members of his family for a long time, his equitable interest could only be defeated by a purchase of the property for value without notice.

In law is that in a claim for declaration of title to land, the onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by E him to a declaration of title. He must rely on the strength of his own case and not on the weakness of the defendant's case. If the onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant, he not having sought the declaration. See Kodilinye v. Odu, 2 W.A.C.A. 336 at F pp. 337 & 338, and Abisi's case, *supra*. The position then is that in an action for declaration of title to land, the plaintiff should concentrate on proving his case on the evidence led by him; he should not pre-occupy himself, as had been done in this case, with the question whether the defendant's case was weak or that the defendant's title to the land in dispute was defective. How- G ever, if the evidence led by the defendant supports case, the plaintiff can rely on it.

The crucial question then is whether the appellant led evidence which could warrant her claim for declaration of title to the land in dispute being H granted. The evidence which she led was based on traditional history alone. Where evidence of traditional history is not contradicted or in conflict and found by the court to be cogent, it can support a claim for declaration of title. That was not so in this case as there was evidence that the property in dispute was at a certain time an abandoned property within the Abandoned Property

(Custody and Management) Law of the Rivers State and that pursuant to the powers conferred on the Authority, the Authority subsequently released and transferred it to the respondents. There was the payment of arrears of rent by the appellant for the period during which she occupied the property in dispute B in the absence of George Ozokpo, which, in law, estopped the appellant from denying that the present respondent and the late wife of late George Ozokpo (who were administrator and administratrix of the estate of the late George Ozokpo) were her landlords. There was also the fact that without protest or being disturbed by the appellant and/or her father, the late George Ozokpo, C having purchased the property in dispute from Ogbuka, stayed with his family in the property in dispute for a period of about ten years. In the circumstance the appellant had not established her claim by means of evidence of traditional history.

The foregoing is not the end of the matter. If, as in this case, the evidence of D traditional history is not conclusive, then the court should consider the evidence, if any, of recent acts of ownership or possession. See Kojo v. Bonsie (1953) 14 W.A.C.A. 242 and Motunwase v. Sorungbe, (1988) 4 NW.L.R. (pt.92) 90. The court below rightly held that the learned trial Judge was wrong to hold that the appellant had proved acts of ownership over a sufficient length of E time numerous and positive enough to warrant the inference that the appellant was the owner of the land in dispute. The following was the view of the court below on that aspect of the matter:

*“If I may ask where are the numerous and positive acts ownership) over a sufficient length of time to warrant the inference that she is the owner. The F answer is in the negative.... The learned trial judge held that the respondent has proved acts of ownership over a sufficient length of time numerous and positive enough to warrant the inference that the respondent is the owner. That is the rule in Ekpo v. Ita, 11 N.L.R. 68. The sort of acts of ownership envisaged under the rule consists of possession for a long time, grant of G leases and tenancies, receipts of rents or tributes from such property. The respondent led no evidence to show this. In my opinion the respondent did not establish to the satisfaction of the court the declaration of title she sought”*

The statement of the court below quoted above, represents the true H factual situation and the correct application of the law. The finding of the learned trial Judge was not supported by the evidence before the court and the court below was right to reverse it.

An appellant court will reverse findings of fact if in its opinion they are not supported by evidence. See Lengbe v. Imale (1959) W.R.N.L.R. 325:

(1959) S.C.N.L.R 640; AND Fatunde v. Omwoamanam, (1990) 2 N.W.L.R. (PT. 182) 322. The appellant did not adduce any evidence of facts of ownership in support of her claim for a declaration of title. The fact that the appellant occupied the property in dispute for a brief period could not rightly be regarded as an act of ownership because she did so in the absence of George Ozokpo who fled Port Harcourt during the relevant period as a result of the civil war and, in any case the appellant paid rent for the aforesaid period. If in a claim for declaration of title, a plaintiff relies on traditional history or acts of ownership and fails to adduce evidence of traditional history or of acts of ownership warranting the granting of his claim, the proper order which the court should make is one dismissing his claim, See Dibiamaka v. Osakwe (1989) 3 N.W.L.R. (PT.167) 101. Also, where the evidence of traditional history is scanty and there is no evidence of acts of ownership, the burden on the plaintiff to prove his claim for a declaration of title has not been discharged; the claim should be dismissed. See Piaro v. Tenalo & Anor, (1976) 12 S.C. 31. Further, the allegation of the appellant was that the land in dispute belonged to her grandfather and it was her late father that granted it to her. There was no evidence about how her grandfather acquired the land in dispute. If a plaintiff's claim for declaration of title to land is based on a grant of such land to him, the burden is on him to plead and the prove the origin of the title of the grantor unless it is admitted. Apart from other things, was the father of the appellant the only child of her grandfather? Finally, the case of the appellant was so discredited by the evidence led by the respondent that it would be unreasonable and inequitable to grant her a declaration of title to the land in dispute. If a defendant, in a claim for declaration of title to land, is able to discredit by evidence, oral or documentary, the evidence of the plaintiff, then the claim of the plaintiff should be dismissed. See Ogundairo v. Okanlawon & Ors, (1963) 1 All N.L.R. 358 at p. 359. The court below was right in holding that the appellant did not establish her claim to a declaration of title to the property in dispute.

A plaintiff may fail to establish his claim for declaration of title to land. That does not mean that he must necessarily fail in his claim for damages for trespass and injunction. See Ojibah v. Ojibah, (1991) 5 N.W.L.R. (PT. 191) 296. In the case of the appellant's claim for damages for trespass, the view expressed by the court below, with which I agree, was that only a person in possession of the land in dispute at the time that the trespass was committed could sue for damages. See Amakor v. Obiefuna, (1974) 1 All N.L.R. (PT. 1) 119. The court below held rightly that there was no evidence that the appellant was in possession of the land in dispute at the relevant time. The only evidence

that the appellant eve occupied the property in dispute at the relevant time was that she did so when George Ozokpo fled Port Harcourt during the civil war. Even in that case, she paid arrears of rent to the respondents for the aforesaid occupation. The appellant was, therefore, not entitled to damages for alleged trespass by the respondent as there was no admissible and credible evidence that she was in possession of the property in dispute at the material time. The respondent, in this case, was able to establish that the in dispute belonged to George Ozokpo and that he (respondent) was the administrator of the estate of the said George Ozokpo. If George Ozokpo is not dead he could not have been made to pay damages for trespass because an owner of land cannot be made to pay damages for an alleged trespass on his land. See Efana v. Adekunle, (1961) 5 E.N.L.R 55.

With reference to the appellant's claim for injunction, the appellant failed to establish that she had any right or interest in the and in dispute warranting protection by an injunction. The court below rightly held that the claim for an injunction should not have been granted by the learned trial Judge.

The inevitable conclusion to which I have come is that the answer to the question raised under issue (4) above is in the affirmative. The court was right in setting aside the judgment of the learned trial Judge and in substituting it with an order dismissing the appellant's claim.

The appeal fails. The judgment of the court below is affirmed. The appeal is dismissed with N1, 000.00 costs to the respondent.

---

### BELGORE JSC

The Abandoned Property Law of Rivers State is clear in S.2 and it is remarkable that it was never an issue in the High Court of whether that Law applied or not. The issue by the appellant all along is that the land belonged to her through inheritance. This position of the appellant became unbeatable when she had judgment against her in the magistrate court on the arrears of rent for illegal occupation without appealing and willingly paying the judgment debt. There is certainly no good faith in the contention of the appellant. Thus, I am in full agreement with Adio, J.S.C in his judgment that this appeal has no merit. For the reasons and conclusion in the said judgment which I adopt as mine, I also dismiss this appeal. I make the orders as to costs,

H

---

### OGWUEGBU JSC

I have had the privilege of reading before now the judgment of my

brother Adio, J. S. C. just read. I agree entirely with the reasoning and conclusions that this appeal should be dismissed.

This appeal is against the judgment of the Court of Appeal, Port Harcourt Division, where that court unanimously reversed the judgment of the learned trial judge and dismissed the plaintiff/applicant's claim. The court below reversed the findings of fact made by the learned trial judge. B

The appraisal of oral evidence and the ascription of probative values to such evidence is the primary duty of a tribunal of trial and a court of appeal will only interfere if it is convinced that the latter has exercised its discretion on wrong principles See Bank of Baroda v Mercantile Bank of Nigeria Ltd., C (1987) 3 N.W.L.R (Pt 60) 233 AT 240 and Jamal Engineering Co. Ltd. v. Misr. Nig. Ltd. (1972) 1 All N.L.R (Pt. 1) 322.

The court below found that the judgment of the learned trial judge was not supported by the evidence. The court below found that:

*"There is no evidence to support this finding. Protests if any were to Ogbuka D.W. 3 who built on the land. Abundant evidence exists that in 1954 Ogbuka completed the house. He moved in. In 1958 he sold it to George Ezeojiako Ozokpo who lived in the house with his family. He had tenants. He fled in 1968 because of the civil war. The respondent occupied it in his absence. At the end of the civil war, the appellant and the widow of Ozokpo returned to Port Harcourt. The Abandoned Property Authority took over the house as abandoned property. They had the house released to them by the Abandoned Property authority and got judgment of arrears of rent against the respondent who paid up.... I agree with Mr. Udogu that the lower court relied on unproved and non-existent evidence to give judgment for the plaintiff."* F

*"On the whole the complaints against the soundness of the judgment are well founded. In the present appeal it is clear from the records that ample evidence was before the learned trial judge, but seems to me clear from his judgment that he did not evaluate the evidence before him properly so as to form an opinion on the whole case. It is observed that throughout the judgment, he avoided making specific findings of facts on issues before him.... I am satisfied that on the whole record that he has not taken proper advantage of having seen and heard the witnesses in the case and in my judgment this appeal should be allowed."* H

The above findings and many more in the judgment of the Court of Appeal with which I am entirely in agreement, show that the learned trial judge arrived at his decision as a result of improper exercise of judicial discretion. The court below was therefore right in disregarding those findings of fact

which were not supported by evidence. See Chief Ebba v. Chief Ogodo & Or (1984) 4 S.C. 84 at 89 and Elike v. Nwankwoala & Ors. (1984) 12 S.C. 301 at 325.

The action instituted in the High Court by the appellant herein is to say the least an abuse of the process of the court. Here is a defendant who was sued in the magistrate's Court, for arrears of rent by the respondent and the widow of George Ozokpo (administrator and administratrix of the estate of George Ozokpo for the period she occupied the house when George Ozokpo, his family and fled to Port Harcourt when the Federal troops overran the city. Judgment was obtained against her for arrears of rent. She did not appeal against that judgment which she should have done if she had any claim or title to the land and building. She did not even raise the issue of title in that court. She promptly paid the judgment debt and resorted to a fresh proceeding, in the High Court for a declaration of title to the land on which the building stands.

The learned trial judge should have struck out the action since he was aware of that judgment. That notwithstanding, he proceeded to hear and determine the appellant's claim. This in itself is a show of judicial indiscretion which is judicially undesirable.

The appellant's compliance with the judgment of the learned magistrate was a clear acknowledgment of the title of the respondent's predecessor to the land and building and the judgment remains binding on the parties until set aside and this was not done.

For the above reasons and the fuller reasons contained in the judgment of Adio, J.S.C., I too dismiss the appeal with costs of N1, 000.00 in favour of the respondent.

---

#### MOHAMMED JSC

I agree that this appeal ought to be dismissed for the reasons given in the lead judgment of my learned brother, Adio, J.S.C. I have had a preview of the judgment in draft. My learned brother had made considerable findings on all the issues raised in this appeal. I am of the same opinion for the reasons which my Lord has given and have nothing to add. The appeal is dismissed with costs as assessed in the lead judgment.

H



### IGUHJSC

I have had the advantage of a preview of the lead judgment just delivered by my learned brother. Adio. J.S.C. and I agree that this appeal is without substance and should be dismissed.

The one single issue I desire to say a word or two about is that which poses the question whether Exhibit D, the judgment of the Magistrate's court against the appellant for arrears of rent operated as estoppel per rem judicatam in the present suit. The respondent, as plaintiff at the Chief Magistrate's court, Port Harcourt, had instituted an action in suit number PMC/130/75 against the appellant.

The said suit was for arrears of rent in respect of the very building situate at No. 38 Abakiliki Street, Diobu, Port Harcourt which is the subject matter of this declaration of title action. Judgment was entered for the appellant against the respondent in the sum of n135, 00 being arrears of rent owed by the respondent to the appellant in respect of the property with costs. The respondent duly satisfied this judgment of court. She also admitted that she did not lodge an appeal against the said judgment, Exhibit D.

The doctrine of res judicata is derived from the maxim nemo debet bis vexari pro eadem causa. It is an application of the rule of public policy that no man shall be vexed twice for one and the same cause on the same issues, See Adomba v. Odiese (1990) 1 N.W.L.R. (part 125) 165 at 178. It is the causa that matters, and a plaintiff cannot by formulating fresh claim, relitigate the same cause. But for the plea of res judicata to succeed, it must be established that the identity of the subject matter of the litigation and the identity of claim and the issue in both the present and the previous action are the same. The burden is on him who lies on the plea of res judicata to establish-

- a. That the parties in the previous and present suits are the same
- b. That the subject matter or litigation in the two cases is identical and
- c. That the claim and the issue in the two cases are the same.

See Idowu Alasa & Others v. Sanya Olori Ilu (1965) N.M.L.R. 66 Yoye v. Olubode and other (1974) 1 All N.L.R. (part 2) 118 at 123 and Oke v. Atoloye (1985) 1 N.W.L.R. (part 15) 241 at 260.

There can be no doubt, indeed it is common ground that the parties and the res, that is to say, the subject matter of litigation in both Exhibit D and the present action are the same. It is equally clear that the claim and the issue in the two cases are not the same. Exhibit D is a straight forward claim for arrears of rent whilst the present action is for declaration of title, trespass and injunction in respect of the same property. Accordingly Exhibit d cannot operate as estoppel per rem judicata in the present action.

B Issue was however clearly joined by the parties on the effect of Exhibit D in the present action. In this regard, the court below per Omosun, J. C.A. with Onu, J.C.A., (as he then was), and Jacks, J.C.A. concurring held that by the payment of arrears of rent by the appellant to the respondent in respect of the property in dispute, the appellant had acknowledged the respondent as the landlord of the building and was therefore estopped from denying the Appellant's title to the premises.

C I agree entirely with the above view of the court below on the effect of Exhibit D in the present action. Although Exhibit D may not strictly speaking sustain the plea of res judicata in the present action, it can, as it was effectively argued in both courts below, operate as an estoppel.

D From Exhibit D which was not appealed against and, therefore, remains a valid judgment of a court of competent jurisdiction, the appellant was at all material times the respondent's tenant in respect of the building in issue. It is not disputed that she paid N135.00 being arrears of rent and costs to the respondent on the determination Exhibit D.

E The rule is firmly established that a tenant cannot dispute the title of his landlord who put him into possession of the premises. So too, payment of rent by a tenant to his landlord is prima facie evidence of the landlord's title to the premises, in the absence of fraud, misrepresentation or mistake. Unless a tenant is able to establish that he paid rent by fraud, misrepresentation or mistake or in ignorance of the true state of affairs, he is estopped by his payment of rent to the landlord from denying the latter's title. See Olorunkoje v. Rokosu and Another (1953) 20 N.L.R. 118, Cooper v. Blandy (1834) 1 Bing F N.C 45 and Madukolu and others v. Nkemdilim (1962) All N.L.R. (PART 2) 581.

G In the present case, the appellant was unable to establish that she paid her rent by some fraud, misrepresentation or mistake or in ignorance of the true state of affairs. In the circumstance, I am in entire agreement with the court below that the respondent's title as landlord was sufficiently established.

H It is for the above and the fuller and more detailed reasons contained in the lead judgment of my learned brother that I, too, dismiss this appeal as totally unmeritorious. I abide by the consequential orders including those as to costs therein contained.